

● ● ● JAIME E. KEOGH, CPA

To: Patrick Brogan, Esquire

From: Jaime E. Keogh, CPA, CFE

Re: Review 2011 IRS Tax Return of LFC Enterprises , Inc. provided by Davey & Brogan, P.C. on Behalf of Plaintiffs in Civil Action No. 2:12ev146 and offer opinions surmised from that return and other documents.

Date: August 7, 2014

I. Background

On July 10, 2014, I was retained to provide forensic accounting services in regards to the current litigation matter.

II. Approach

As part of the examination of this matter, the following actions were taken:

- Obtained, reviewed and analyzed the 2011 LFC Enterprises, Inc Tax Return including supporting statements but the K-1's for the 38 Shareholders were omitted.
- Obtained the IRS instructions and FAQs for Form 5884-B the New Hire Retention credit available for the year 2011.
- Reviewed information on the Lipman Produce website located at [www.lipmanproduce.com](http://www.lipmanproduce.com)
- Obtained, reviewed and analyzed personnel information for Martin DeJesus (Kuzzens-00112); Francisco Mendez Gomez (Kuzzens-00132); Guadalupe Gutierrez (Kuzzens-00139); Documents provided in responses to Plaintiffs' second request for production of documents to Kuzzens, Inc. item number 40.
- Read Deposition of Gerard B. Odell, Jr. Chief Farming Officer for LFC Enterprises, Inc. dated August 4, 2014.

III. Findings

New Hire Retention Credits on Form 5884 of the 2011 LFC Enterprises, Inc.  
1120S Tax Return

- LFC Enterprises, LLC took \$219,269 of New Hire Retention Credits on Form 5884 for 252 workers that were hired in 2010 and retained for at least one year. This was a credit for 2011 for workers hired during 2010 and retained for work. 3 of the 252 workers were employed to work on Kuzzen's South Carolina farm during 2010. They were as follows:
  - Guadalupe Gutierrez (Kuzzens-000139); SSN [REDACTED] s Retained Worker No. 45 on the 2011 Tax Return. He was hired on

EXHIBIT

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10/26/2010 and the company received a \$1,000 tax credit. According to the personnel information, he lives at [REDACTED] Naples, FL 34101; belongs to Company – Farm2 and voluntarily quit on 08/03/2011

- Martin A DeJesus (Kuzzens-00112); SSN [REDACTED] is Retained Worker No. 54 on the 2011 Tax Return. He was hired on 10/26/2010 and the company received a \$1,000 tax credit. According to the personnel information, he lives at [REDACTED] Naples, FL 34101; belongs to Company – Farm2.
- Francisco Mendez Gomez (Kuzzens-00132); [REDACTED] is Retained Worker No. 111 on the 2011 Tax Return. He was hired on 07/07/2010 and the company received a \$1,000 tax credit. According to the personnel information, he lives at [REDACTED] Eastville, VA 23347; belongs to Company – Farm15.

**Website for Lipman Produce [www.lipmanproduce.com](http://www.lipmanproduce.com)**

- The welcome page of Lipman states the following: "*When it comes to fresh, safe, great-tasting tomatoes and other produce, one word says it all: Lipman. As the largest field tomato grower in North America, we're on the cutting edge of the agriculture industry – providing "access to the acre" from seed to delivery through a vertically integrated network of research & development, farming, processing, repacking and procurement. And all along the way, we give our customers 100 percent. Every time. Every day.*"
- Vertical Integration is defined as "a strategy used by a company to gain control over its suppliers or distributors in order to increase the firm's power in the marketplace, reduce transaction costs and secure supplies or distribution channels." (*definition from [www.strategicmanagementinsight.com](http://www.strategicmanagementinsight.com)*)
- According to Internal Revenue Code Section ("Code Sec.") 1501, an affiliated group of corporations may file a consolidated return, as long as the members of the group consent to all the consolidated return regulations under Code Sec. 1502, prior to filing of the return. An affiliated group is one or more includable corporation connected through stock ownership and having a common parent.
- In business, **consolidation** or **amalgamation** is the merger and acquisition of many smaller companies into much larger ones. In the context of financial accounting, consolidation refers to the aggregation of financial statements of a group company as consolidated financial statements. The taxation term of consolidation refers to the treatment of a group of companies and other entities as one entity for tax purposes. (*definition from [www.wikipedia.com](http://www.wikipedia.com)*)

## **2011 1120S Tax Return for LFC Enterprises, Inc.**

- LFC Enterprises, Inc. is an S corporation which is a corporation that elects to be treated as a pass-through entity for tax purposes. The S corporation had 38 shareholders during the 2011 tax year. K-1's for the 38 shareholders were not provided with the tax return.
- On Page 2, Schedule B of the 2011 1120S Tax Return under question number 2a, it lists the business activity as Farming and Packing and under question number 2b, it lists the product or service as Vegetables and Farm.
- On Page 2, Schedule B of the 2011 1120S Tax Return under question number 3, it asks "At the end of the tax year, did the corporation own, directly or indirectly, 50% or more of the voting stock of a domestic corporation?" This question is answered yes and the below is the list from Statement 5 of the Tax Return showing LFC Enterprises, Inc. held 100% of the stock in the following domestic corporations during 2011:

<b>Number</b>	<b>Name</b>
1	Bonanza Produce, Inc.
2	Custom-Pak, Inc.
3	Flavor Fresh, Inc.
4	LFC Agricultural Services, Inc.
5	LFC Management Services, Inc.
6	Paragon Produce Corp
7	Six L's Packing Company, Inc.
8	Produce, Inc.
9	Redi Plants Corp
10	Kuzzens, Inc.
11	Lipman & Lipman, Inc.
12	WFA Land Co., Inc.
13	FFD Land Co.
14	World Agriculture, Inc.
15	WMWAC, Inc.
16	Fresh Horizons Procurement, Inc.
17	Custom-Pak Nogales, Inc.
18	Farm Op, Inc.
19	Farm Labor Income Program, LLC
20	Florida Packing, LLC
21	Immokalee Packing, LLC
22	Lipman Acquisitions, LLC
23	LFC-RPC Investment, LLC
24	FD Holdings of Swift, Inc.

**Deposition of Gerard B. Odell, Jr.**

- Mr. Odell states that he works for LFC Enterprises and is the Chief Farming Officer (Page 6, Line 15/16).
- Mr. Odell states the LFC Enterprises is a holding company, and all of the other companies that are referred to in this attachment are wholly-owned subsidiaries of LFC Enterprises (Page 8, Line 25; Page 9 Lines 1-3)
- Mr. Odell states that LFC Ag doesn't really trade. It's a payroll service so they don't buy, sell and get involved in the day-to-day of the farming and packing business. They are a payroll company. (Page 13 – Lines 5-8)
- Mrs. Odell states that Kuzzens is principally an operating company that works in South Carolina or South Carolina and Virginia farming operations and they own some property in those areas as well. No one receives a paycheck from Kuzzens. Paychecks come from LFC Management or Agriculture. (Page 18, Lines 16-19, 22, 24-25)
- Mr. Odell states that W-2s are issued from LFC Ag and LFC Ag pays the premiums for worker's compensation (Page 25, Lines 7-13; 17-21)
- A payroll company is a company like ADP, Paychex, Payday, Paycor that is an independent third party providing payroll services to other non-related businesses. ADP doesn't receive any deductions or credits for the employee and paychecks and W-2s are issued in the hiring company's name, not ADP, Paychex, Payday or Paycor.

**IV. Summary**

LFC Enterprises, Inc is a holding company for other entities including the ones listed above. LFC Agricultural Services, Inc. employs and pays the farm workers and LFC Management Services, Inc. employs the salaried supervisor level and above. Six L's Packing Company, Inc. provides the packing and sales of the produce. Kuzzens, Inc. owns farms where the laborers farm the produce. All these entities work together for the benefit of each other and LFC Enterprises, Inc. Workers paid by LFC Agricultural Services, Inc work the fields on Kuzzens, Inc.'s farm, LFC Management Services, Inc. supervise these workers and determine when, where and how to grow the produce. Six L's Packing Company, Inc. determines how to package the produce and sell to the restaurants and grocery stores. It is interesting to note that Mr. Gerry O'Dell (Chief Farming Officer) stated during his deposition that he works for LFC Enterprises, Inc. but then later explained that, although he works for LFC Enterprises, Inc., he is actually paid by LFC Services Management, Inc.

These various entities work Kuzzens, Inc. farm without written agreements based on the direction and control of the Chief Farming Officer, who controls the operation on the farm. All of these entities are consolidated under LFC Enterprises, Inc. who collects the income, pays the expenses, profits and takes IRS tax credits for the retained workers. It is apparent that the various entities work for and on behalf of each other in a vertically integrated format to produce the harvest from seed to table. As such, each corporation performs a particular

task within the scheme of farming to increase Lipman's power in the marketplace, reduce transaction costs and secure supplies and/or distribution channels.

In my opinion, based on reviewing the 2011 LFC Enterprises, Inc. consolidated tax return and reading the deposition of Mr. Gerard B. Odell, Jr. that LFC Enterprises, Inc. took credit for the retention of employees who worked on Kuzzens, Inc.'s South Carolina farm in June of 2011. Because the various entities within the LFC Enterprises, Inc. consolidated enterprise work for and on behalf of each other, since they are owned by the same 38 shareholders, it is my opinion that LFC Agricultural Services, Inc. employed the farm laborers to work for and on behalf of Kuzzens, Inc. on its South Carolina farm in June of 2011. Both Kuzzens, Inc. and LFC Agricultural Services, Inc. are owned by the same 38 shareholders that own LFC Enterprises, Inc. It is my opinion that LFC Agricultural Services, Inc. employed the farm laborers to work for and on behalf of Kuzzens, Inc. on its Virginia farm in July of 2011.

The shareholders of LFC Enterprises, Inc. elected to be treated as an "S" Corporation on October 1, 2001 which permits the income to pass directly through the corporation onto the 38 shareholders' tax returns. The fact the 38 shareholders have elected an "S" Corporation and that LFC Enterprises, Inc. owns 100% of the subsidiaries listed above means that each of the 38 shareholders own 100% of the subsidiaries.



Jaime E. Keogh, CPA, CFE

August 7, 2014  
Date